

REMARKS

Applicant respectfully traverses the objection of the Examiner that the non-elected claims are not marked as "withdrawn" in their claim Amendment. The Amended Rule 37 C.F.R. 1.121(c) specifically authorizes marking claims as "cancelled", and this is what was done with Claims 1 through 22 in the Amendment mailed April 5, 2004.

There is no known difference between canceling a claim and withdrawing it, except that when one withdraws a claim it must be retyped in the Amendment whereas if it is cancelled it need not be retyped. Thus, Claims 1 through 22 were cancelled with reservation of right to present them in any divisional or continuing patent application.

Therefore, it is respectfully submitted that the Amendment was in compliance with Rule 121.

The Examiner has objected that Applicant has not identified which claims are deemed readable on the elected species.

As it was stated in the Amendment, Claims 23, 24, 25, 26, 28, 30, and 31 are generic and read on the elected species. Claim 27 also reads on the elected species, but Claim 29 does not.

The Examiner objects to Applicant's Remarks and asserts that Claim 23 is mixing "apples and oranges" in that there is no original disclosure to support the use of an expanded thermoplastic material in the panel.

First, it should be noted that Figure 2 shows both a panel used in the heat exchanger constructions, in which the tubes in the material are used as air passages, and as a starting material for the construction shown in Figure 3 and Figure 4.

As it is explained in the Specification, in the last paragraph on page 11 and continuing onto the top of page 12, one can either use the panel 40 as is, or as a material to form the panels 42 and 88 in Figures 3 and 4 which do not use the tubes to conduct gas. As it is stated there:

Instead, the panels are merely used as low-cost thermoplastic sheet material from which to form gas flow conduits. It is possible to use other sheet materials instead for the starting sheets for forming the panels 42 and 88.

For example, it is believed that sheets of expanded thermoplastic materials, such as polypropylene, polyethylene or polystyrene can be used instead of the "sign-board" material. Such sheet materials are widely used as insulating panels in home construction, as flotation materials for floating docks, etc.

Thus, there is a disclosure that the expanded plastic sheets can be used as starting material instead of the extruded material for the panels 40 shown in Figure 2.

As it was explained in the last Amendment, the phrase "having air filled cavities" in Claim 23 is generic in that it covers both the extruded material and the expanded material.

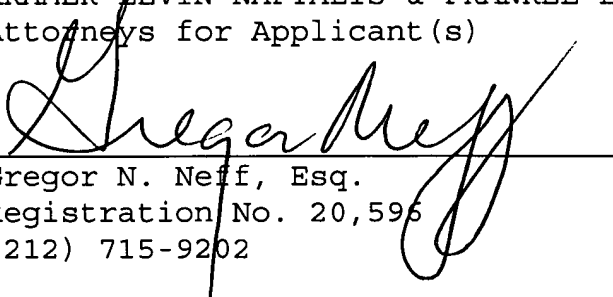
Moreover, Claims 24, 25, 26, 28, 30, and 31 depend from Claim 23 and also are generic.

It appears that any confusion that might exist is caused by the fact that Figure 2 describes both an element of a finished heat exchanger, and a starting sheet for panels having flow passages formed by indentations.

If there are any remaining areas of uncertainty, please call the undersigned attorney to resolve the matter.

Respectfully submitted,

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